

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LESLIE CHOKA,

Plaintiff,

CV-10-702-ST

v.

FINDINGS AND
RECOMMENDATION

TOM McCLELLAN; OREGON DEPARTMENT
OF MOTOR VEHICLES; and JOHN DOES
A to Z,

Defendants.

STEWART, Magistrate Judge:

INTRODUCTION

Plaintiff, Leslie Choka (“Choka”), appearing *pro se*, filed this case on June 18, 2010, alleging two claims for violation of his due process rights under the Fourteenth Amendment of the United States Constitution pursuant to 42 USC § 1983, arising out of the suspension of his Oregon drivers license due to a Nevada conviction. Choka’s first claim is against Tom

McClellan (“McClellan”), Administrator of the Oregon Department of Motor Vehicles (“DMV”) (Count I). His second claim is against the Oregon DMV (Count II). He seeks: (1) declaratory judgment that only Oregon convictions should be used to suspend Oregon drivers’ licenses; (2) an order requiring the Oregon DMV to establish a “foolproof process” to await conclusion of the appellate process before suspending a license based on a conviction; and (3) an order requiring defendants to pay all court costs and other costs of reinstating his driver’s license.

Both defendants filed motions to dismiss Choka’s claims. On February 14, 2011, Judge Michael W. Mosman issued an Opinion and Order (docket # 39) which granted the State of Oregon’s Motion to Dismiss based on the Eleventh Amendment jurisdictional bar (docket #25) and dismissed Count II with prejudice. He also granted McClellan’s Motion to Dismiss based on qualified immunity (docket #29) as to Count I in his individual capacity and dismissed Count I without prejudice and with leave to amend. That left only Count I alleged against McClellan in his official capacity for prospective injunctive relief.

Accordingly, by Order dated February 15, 2011, this court ordered plaintiff to file a First Amended Complaint on or before March 15, 2011, warning that failure to do so would result in dismissal of Count I against McClellan in his official capacity and, as a result, a dismissal of this action (docket # 40).

Plaintiff has not timely filed a First Amended Complaint. Therefore, a judgment should be entered dismissing this action without prejudice.

///

///

///

SCHEDULING ORDER

These Findings and Recommendation will be referred to a district judge. Objections, if any, are due April 11, 2011. If no objections are filed, then these Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

NOTICE

This Findings and Recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any Notice of Appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of a judgment.

DATED this 23rd day of March, 2011.

s/ Janice M. Stewart _____
Janice M. Stewart
United States Magistrate Judge